

## **REMARKS**

This responds to the final office action issued on December 8, 2009. Claim 44 is cancelled, and claims 25, 26, 29-34, 37-43, 45 and 46 remain pending. Reconsideration is respectfully requested.

### ***Claim Rejections – 35 U.S.C. § 112***

Dependent claim 44 is rejected under 35 U.S.C. § 112 as not being supported by the written description. The applicants respectfully disagree. Nonetheless, claim 44 has been cancelled in order to reduce the issues for a potential appeal.

### ***Claim Rejections – 35 U.S.C. § 103***

#### **Independent Claims 25 and 33**

Pending independent claims 25 and 33 are rejected under 35 U.S.C. § 103(a) over the combination of Kraft, Yoo and Cook, along with applying what the Examiner calls “common sense” to render a key claim limitation obvious. The Applicant respectfully submits that these rejections are improper and must be withdrawn.

Independent claim 25 recites a “safe volume profile providing a default volume setting...selected to reduce the risk of damage to a user’s hearing if the mobile device is operated in close proximity to the user’s ear while in the handsfree mode of operation.” A similar limitation is included in independent claim 33. As explained in detail in the previous office action response, nothing similar to this is disclosed in any of the cited references, and the cited Kraft reference actually teaches away from the use of a lower volume setting during “hands free” mode.

In response to the arguments set forth in response to the previous office action, the Examiner now proposes that the claimed safe volume profile is obvious because Kraft discloses a “hands-free” volume setting for a speaker and also discloses that a headset may be worn during a hands-free

mode. From this the Examiner concludes, with no support from the cited reference, that “it would have been obvious for one of the ordinary skill in the art to have such a situation wherein the user volume setting as either modes of operation to have the regular volume profile in [the] handset being higher than the default setting of the volume profile of the handsfree in compensating for the speaker audio level in proximity to the user’s ear according to each mode.” This type of conclusory rejection, lacking any support from the cited references, is clearly improper and must be withdrawn.

The only reference to a head set in the Kraft reference makes no suggestions at all regarding any volume setting:

Hands-free answer to a call may be included as a phone setting and may, together with several other settings, be used in a driving mode. ***Hands-free answer to a call may also be included in other modes, e.g., controlled by the detection of a head set.*** (Kraft, paragraph [0022], with emphasis added.)

The Kraft reference does, however, explain that in “hands free” mode, for use when driving, the sound level is preset to the **highest** volume level – level 5 in Table 2 (Level “5” is identified in Table 1 as the highest volume level in the “sound volume” category). That is, the Kraft reference actually teaches the opposite of the claimed safe volume profile and therefore teaches away from the claim step of initially limiting the volume to a **lower** level. The fact that Kraft also suggests that a head set might be used with some modes (saying nothing about the volume setting) does not make the reference any more applicable to the claims.

Moreover, the Examiner does not appear to dispute that the cited references completely fail to disclose the claimed safe volume profile. Rather, the Examiner simply concludes, with no support from the references, that “it would have been obvious that by common sense the volume set by the user could have been a safe volume setting so that user’s ears would be less likely being damaged.” (Office Action, p.5) Such a rejection, based solely on the Examiner’s interpretation of what is “common sense” and what “could have been”, is improper for numerous reasons, as explained in the previous office action response.

For at least these reasons, the applicants respectfully request that the rejections of claims 25 and 33, along with their respective dependent claims, be withdrawn and that the claims be passed to issuance.

### **Independent Claim 41**

The office action's rejection of independent claim 41 is also without merit. In claim 41, similar to claims 25 and 33, when the mobile device is initially switched to handsfree mode, the mobile device initially limits the volume to a preset initial level. After the volume has been initiated at the preset initial level, the user can raise the volume to a level higher than the preset initial level. In an attempt to show this in the Kraft reference, the office action cites to Kraft's Table 1, along with paragraphs 0015, 0020, 0022 and 0035-0037. The applicant respectfully disagrees.

As explained above and in previous office action responses, Kraft's Table 1 identifies five possible sound volume settings (level 1 – level 5) and Table 2 specifies that the **highest** possible setting (level 5) is used for the hands-free mode while driving. Therefore, Kraft teaches initiating the volume in hands-free mode at the highest setting when switched to a handsfree mode, not initially limiting the volume, as claimed. For at least this reason, the applicants respectfully submit that the rejections of claim 41 and its dependant claims are improper and should be withdrawn.

For at least the above reasons, the applicant respectfully requests that the improper rejections be withdrawn and that the application be allowed.

Respectfully submitted,

JONES DAY

Joseph M. Sauer (Reg. No. 47,919)  
Jones Day  
North Point, 901 Lakeside Avenue  
Cleveland, Ohio 44114  
(216) 586-7506